HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.1116 OF 2004

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Between:

Kavuru Rattamma

……Petitioner

And

The Government of India,
Ministry of Home Affairs,
Rep., by its Under Secretary,
Lok Nayak Bhavan,
Khan Market, New Delhi and another

……Respondents

:: ORDER ::

Counsel for the Petitioner : Shri C.Raghu

Counsel for Respondent No.1 : Shri A.Rajasekhar Reddy

Dated: 31-10-2006

This is a petition for quashing communication dated 02-01-2004 vide which the Government of India, Ministry of Home Affairs rejected the petitioner's claim for grant of pension under Swatantrata Sainik Samman Pension Scheme, 1980 (for short, 'the 1980 Scheme') by being treated as a dependant of late Shri Kavuru Naganna @ Nagaiah of West Godavari District on the ground that the latter had not undergone imprisonment in connection with the freedom struggle and also on the ground that she was not a party to Writ Petition No.16956 of 2000 and Writ Appeal No.1233 of 2001.

I have heard learned counsel for the parties and perused the record. The facts on which there is no dispute between the parties are:

1) Late Shri Kavuru Naganna @ Nagaiah participated in Kalipatnam agitation against jamindars and other State functionaries. He submitted an application on 29-04-1972 for grant of pension by being treated as a freedom fighter. His claim was accepted and vide order dated 28-12-1973, pension was sanctioned to him.

2) After six months, the State Government, on the basis of report received from Collector, West Godavari District that Kalipatnam agitation had not been recognized as freedom movement, suspended payment of pension to late Shri Kavuru Naganna @ Nagaiah. After another two years, show cause notice dated 16-09-1976 was served on Shri Kavuru Naganna @ Nagaiah proposing to cancel the grant of freedom fighters pension to him and by order dated 17-03-1977, pension sanctioned in his favour was cancelled.

3) Seven of other freedom fighters, who were sanctioned pension in lieu of their participation in Kalipatnam agitation, represented to the Government for treating the said agitation as a freedom movement. Their efforts yielded results and vide G.O.Ms.No.736, Revenue (FF) Department, dated 24-08-1991, Government of Andhra Pradesh declared that Kalipatnam agitation was a freedom movement and those who participated in it are entitled to be treated as freedom fighters. The Government of India also recognized Kalipatnam agitation as a freedom movement with effect from 29-09-1991.

4) Thereafter, seven widows of the freedom fighters field Writ Petition No.16956 of 2000 for issue of a direction to the respondents to sanction pension to them with effect from
29-09-1991 i.e., the date with effect from which Kalipatnam agitation was recognized by the Government of India as freedom movement. The same was allowed by the learned Single Judge vide his order dated 01-02-2001, Writ Appeal No.1233 of 2001 preferred by the Government of India against the order of the Single Bench was dismissed by the Division Bench on 31-07-2003.

In the affidavit filed by her, the petitioner has pleaded that her case is similar to those in whose favour pension was sanctioned as a sequel to recognition of Kalipatnam agitation as freedom movement

and, therefore, the respondents cannot discriminate her.

In the counter affidavit filed by him, Shri Virendra Kumar, Under Secretary, Ministry of Home Affairs, Freedom Fighters Division has candidly admitted that Kalipatnam agitation was recognized as freedom movement with effect from
29-09-1991. He has also not disputed that similarly situated persons had filed Writ Petition No.16956 of 2000, which was allowed by the Single Bench and the writ appeal filed against the order of the learned Single Judge was dismissed by the Division Bench. However, in paragraph 4 of the affidavit, the deponent has tried to rake up another issue regarding the entitlement of the petitioner to be treated as widow of late Shri Kavuru Naganna @ Nagaiah by asserting that in the application form he had mentioned the name of his wife as Suramma. At the same time, Shri Virendra Kumar has referred to the enquiry conducted by Mandal Revenue Officer, Narsapur, which shows that late Sri Kavuru Naganna used to describe the petitioner as Suramma in order to keep alive the memory of his second wife.

Shri A.Rajasekhar Reddy fairly stated that the claim of the petitioner is similar to those who were petitioners in Writ Petition No.16959 of 2000 and respondents in Writ Appeal No.1233 of 2001. He, however, tried to persuade the Court to deny relief to the petitioner by asserting that her identity as wife of late Shri Kavuru Naganna @ Nagaiah is disputed.

In my opinion, the petitioner is entitled to relief in terms of order dated 01-02-2001 passed by the learned Single Judge in Writ Petition No.16956 of 2000 and order dated 31-07-2003 passed by the Division Bench in Writ Appeal No.1233 of 2001 and she cannot be denied the benefit of pension on the premise that the concerned authorities have raised some doubt about her identity as widow of late Shri Kavuru

Naganna @ Nagaiah. Even if the averments contained in paragraph 4 of the affidavit of Shri Virendra Kumar are treated as correct, the report submitted by Mandal Revenue Officer, Narsapur clearly shows that the petitioner is the widow of late Shri Kavuru Naganna @ Nagaiah. Therefore, it is not possible to agree with Sri A.Rajasekhar Reddy that the petitioner is not the dependent of late Shri Kavuru Naganna @ Nagaiah.

I am further of the view that the averments contained in paragraph 4 of the counter affidavit cannot be made basis denying relief to the petitioner because her entitlement to be treated as widow of late Shri Kavuru Naganna @ Nagaiah has not been doubted in letter dated 02-01-2004.

In the result, the writ petition is allowed. The decision containing communication dated 02-01-2004 is quashed and the respondents are directed to sanction pension to the petitioner under the 1980 Scheme with effect from 29-09-1991. For the month of November, 2006, pension shall be paid to the petitioner on or before 30-11-2006. For all succeeding months, pension should be paid to her on the date pension is paid to similarly situated persons. The arrears be paid to the petitioner within a period of four months from the date of receipt of copy of this order.

G.S. SINGHVI, CJ

31-10-2006

Note: The Court Officer is directed to give an attested copy of this order to the learned Assistant Solicitor General.

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